

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BYRON BOYD,

Plaintiff,

v.

UNITED TRANSPORTATION UNION
INSURANCE ASSOCIATION, et al.,

Defendants.

CASE NO. C05-1413JLR

ORDER

I. INTRODUCTION

This matter comes before the court on cross-motions for summary judgment (Dkt. ## 54, 55). For the reasons stated in this order, the court DENIES Plaintiff's motion for summary judgment (Dkt. # 54) and DENIES Defendants' motion for summary judgment (Dkt. # 55).

II. BACKGROUND

Plaintiff Byron Boyd was an employee of the United Transportation Union ("UTU") since 1969. He was president of the UTU from 2001 to 2004. Mr. Boyd was medically disqualified from his position in 2004, suffering from hypertension, diabetes, high cholesterol, arrhythmia, and other stress-related health issues. He subsequently sought disability retirement benefits. The parties do not dispute Mr. Boyd's underlying

1 disability or medical disqualification from his job. The only dispute is whether Mr. Boyd
2 was properly excluded from receiving disability retirement benefits because his disability
3 was due to injury incurred while he was engaged in a criminal enterprise.

4 **A. Mr. Boyd's Involvement in the Criminal Conspiracy**

5 On September 12, 2003, a grand jury indicted Mr. Boyd for crimes including mail
6 fraud, wire fraud, racketeering, bribery, and embezzlement. On March 11, 2004, Mr.
7 Boyd plead guilty to Count Two of the Superseding Indictment: RICO Conspiracy – 18
8 U.S.C. § 1962(d). See Heekin Decl., Ex. 5 (Superseding Indictment).

9
10 The conspiracy began in 1994 and continued through August 2003, generating
11 illegal income for Mr. Boyd and his co-conspirators. See Monaco Decl., Ex. A (Boyd
12 Plea Agreement) at 11-12. Mr. Boyd conspired with others to dominate and control the
13 UTU and its designated legal counsel ("DLC") program through the commission of
14 various crimes. In exchange for significant cash payments, Mr. Boyd and his co-
15 conspirators appointed attorneys as designated counsel. Mr. Boyd and his co-
16 conspirators used the illegal proceeds for union campaigns and personal use. Plaintiff
17 does not dispute that Mr. Boyd's involvement in the criminal conspiracy constituted a
18 criminal enterprise.
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20 **B. Mr. Boyd's Disability**

21 On February 18, 2003, Mr. Boyd's doctor, Dr. Mitchell A. Karton, observed that
22 Mr. Boyd was considering leaving work because of his various health problems and the
23 excessive stress of his position. On March 4, 2004, and March 9, 2004, Dr. Karton wrote
24 letters to the UTU recommending that Mr. Boyd be placed on permanent and total
25 disability because work-related stress and travel were adversely affecting his blood
26 pressure, diabetes, cholesterol, and heart disease. The doctor did not mention the
27 criminal conspiracy or indictment.
28

On March 10, 2004, Mr. Boyd ceased employment with the UTU after being medically disqualified from his job.¹ Mr. Boyd sought disability benefits from the Railroad Retirement Board (“RRB”), a prerequisite under Section 1.18 of the Plan to receiving disability benefits. The RRB granted disability status to Mr. Boyd as of March 10, 2004. Compl., Ex. D (3/25/2004 Letter from RRB). The RRB decision determined Mr. Boyd’s right to a disability retirement benefit under the UTU Plan. See Compl., Ex. A (Plan) at § 1.18. The parties do not dispute the existence of Mr. Boyd’s disability.

C. Pension Plan Disability Benefit

As part of Mr. Boyd’s employment with the UTU he was eligible for a disability benefit under the UTU’s Pension Plan (the “Plan”). Mr. Boyd received a copy of the Plan, as well as a summary plan description (“SPD”), which set forth disability benefit requirements. See Compl. ¶ 9, Exs. A, B. The SPD described the following criminal enterprise exclusion which applied to the Plan’s disability retirement benefit:

You will be eligible to receive a Disability Retirement Benefit if you have completed at least 10 Years of Service and you become disabled, provided that your disability is not due to a deliberate self-inflicted injury or injury incurred while you were engaged in a willful criminal enterprise.

Id., Ex. B (Summary Plan Description) at 2. The Plan language itself contained a different and broader description of the criminal activity exclusion for injuries “contracted, suffered, or incurred” while the Plan participant was engaged in a willful criminal enterprise. The UTU Pension Administrative Committee (the “Committee”) applied the language of the Plan in evaluating and denying Mr. Boyd’s claim. It

¹ The order and timing of these events is remarkable. On March 4, 2006, and March 9, 2006, Mr. Boyd’s doctor advised the UTU to put Mr. Boyd on permanent disability status. On March 10, 2006, the UTU medically disqualified him from his job, which entitled him to a disability retirement benefit. On March 11, 2006, he signed a plea agreement which disqualified him from future union employment and resulted in a prison sentence. This sequence of events allowed Mr. Boyd to collect a disability retirement benefit for a job he was ineligible to hold because of his own criminal activities.

1 determined that Mr. Boyd had engaged in a criminal enterprise over a period of years,
2 and that he “probably contracted and/or incurred [his health] condition(s)” while he was
3 engaged in a willful criminal enterprise. Compl., Ex. H. The court previously concluded
4 that the language in the Plan and the SPD were materially different, and that the
5 Committee erred when it did not construe Mr. Boyd’s claim under the more favorable of
6 the two documents, the SPD. See Mar. 7, 2006 order at 6-7 (Dkt. # 30).

7 On April 14, 2006, the parties stipulated to de novo review of the Committee’s
8 decision to deny Mr. Boyd disability retirement benefits. Joint Stipulation ¶ 1 (Dkt. #
9 37).

10 III. ANALYSIS

11 Pursuant to the parties’ stipulation, the court reviews de novo the plan
12 administrator’s decision to deny benefits. Tremain v. Bell Indus., 196 F.3d 970, 978 (9th
13 Cir. 1999). The court may hear evidence outside the administrative record where
14 circumstances clearly establish that additional evidence is necessary to conduct an
15 adequate de novo review. See, e.g., Mongeluzo v. Baxter Travenol Long Term Disability
16 Benefit Plan, 46 F.3d 938, 943-44 (9th Cir. 1995). In conducting a review of an
17 administrator’s decision to deny benefits, the district court may decide the case by
18 summary judgment if there are no genuine issues of material fact. Tremain, 196 F.3d at
19 978. Where genuine issues of material fact regarding the administrator’s decision to deny
20 benefits are present, summary judgment is inappropriate and factual findings are
21 necessary. See id. (reversing for factual determination regarding employee’s status under
22 de novo standard of review).

23 In examining these motions for summary judgment, the court must draw all
24 inferences from the admissible evidence in the light most favorable to the non-moving
25 party. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000). Summary
26 judgment is proper where there is no genuine issue of material fact and the moving party
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1 is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears
2 the initial burden to demonstrate the absence of a genuine issue of material fact. Celotex
3 Corp. v. Catrett, 477 U.S. 317, 323 (1986). For purely legal questions, summary
4 judgment is appropriate without deference to the non-moving party.

5 **A. Mr. Boyd Engaged in a Willful Criminal Enterprise Through August 2003.**

6 Mr. Boyd first argues that the disability retirement benefits exclusion cannot apply
7 because his criminal actions ended in 2001, and his injuries were not charted until 2003.
8 The SPD contains a disability retirement benefits exclusion for disabilities due to
9 deliberate self-inflicted injury or injury incurred while engaged in a willful criminal
10 enterprise. The parties disagree over whether this exclusion is applicable to Mr. Boyd.
11 Mr. Boyd argues that the willful criminal enterprise exclusion is not applicable in his case
12 because the specific acts to which he pled guilty occurred between 1998 and 2001. Dr.
13 Karton did not begin charting Mr. Boyd's health problems and work-related stress issues
14 until February 2003. Thus, Mr. Boyd urges that "several years" separate his crimes from
15 his disability, and the criminal enterprise exclusion is therefore not applicable to him.
16 See Pl.'s Mot. for S.J. at 8. This argument is without merit.

17 The parties do not dispute the facts to which Mr. Boyd pled guilty, or the dates in
18 Mr. Boyd's plea agreement. In his plea agreement, Mr. Boyd admitted to the illegal
19 solicitation and acceptance of cash payments from 1994 through August 2003. See
20 Monaco Decl., Ex. A (Boyd Plea Agreement) at 12. The illegal payments were used for
21 his union campaigns and personal use. Mr. Boyd attempts to distinguish individual acts
22 of his conspiracy in order to deny a temporal connection between his disability and his
23 criminal conspiracy and conviction. In light of his plea agreement, however, there is no
24 basis for parsing the individual acts of the conspiracy. Mr. Boyd pled guilty to a long-
25 running criminal conspiracy, rather than individual criminal acts. Nevertheless, in spite
26 of the fact that he pled guilty to accepting cash payments through August 2003, he asks
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1 that only specific acts listed in the indictment be considered. He refers to these as the
2 “overt acts . . . to which he pled guilty . . .” See Pl.’s Mot. for S.J. at 8.

3 The court cannot disregard the nature of Mr. Boyd’s plea agreement and the
4 admitted facts. Mr. Boyd pled guilty to accepting illegal payments through August 2003.
5 See Monaco Decl., Ex. A (Boyd Plea Agreement) at 12. His argument is further
6 undermined by the fact that he admitted to funding his 2003 campaign with illegally
7 accepted funds, and pled guilty to conspiracy charges for his actions through 2003. Id.
8 The parties do not dispute that Mr. Boyd’s criminal actions constitute a willful criminal
9 enterprise, and the court will not disregard facts that show a conspiracy through at least
10 August 2003. The court concludes as a matter of law that Mr. Boyd engaged in a willful
11 criminal enterprise through at least August 2003, as admitted in his plea agreement.²
12

13 The parties do not dispute the substantial overlap between Mr. Boyd’s serious
14 health problems and the criminal enterprise detailed in his plea agreement. Dr. Karton’s
15 chart notes indicate that Mr. Boyd’s health problems were ongoing throughout 2003. Dr.
16 Karton ultimately recommended that Mr. Boyd be placed on total disability on March 4,
17 2004. Heekin Decl., Ex. 2 (Karton notes); Ex. 3 (March 4, 2004 Karton Letter). The
18 reasons given for placing Mr. Boyd on total disability on March 4, 2004, are substantially
19 identical as those listed in Dr. Karton’s February 18, 2003 chart notes. Id., Ex. 2 (Feb.
20 18, 2003 chart notes). Little appears to have changed except for Mr. Boyd’s increased
21 work-related stress, which likely increased as a result of his indictment for racketeering,
22 fraud, and conspiracy.

23 Dr. Karton’s recommendation that Mr. Boyd be placed on total disability was the
24 result of a one-year observation of his declining health and increased stress. During this
25 period Mr. Boyd engaged in a criminal conspiracy and was indicted on a variety of
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28 ² The court’s determination that Mr. Boyd’s criminal enterprise continued through at least
August 2003 is not a determination that it ended in August 2003.

1 criminal charges. The court rejects Plaintiff's argument that he was not engaging in
 2 criminal acts (or their aftermath) while his health was deteriorating. The court concludes
 3 that a temporal relationship existed between Mr. Boyd's health problems and the criminal
 4 conspiracy.

5 **B. The Plan Excludes Disability Due To Injury Incurred While Engaged in a**
 6 **Criminal Enterprise.**

7 Mr. Boyd urges the court to find that even if a temporal connection exists between
 8 his disability and his "willful criminal enterprise," he is entitled to disability benefits
 9 because more than a temporal connection is required. Plaintiff urges that the SPD's
 10 language requires a "causal connection," not merely a temporal one. See Pl.'s Mot. for
 11 S.J. at 9. The Defendants proffer a different construction, framing the issue as "whether
 12 Mr. Boyd's disability was 'incurred while [he was] engaged in a willful criminal
 13 enterprise.'" See Defs.' Mot. for S.J. at 8.

14 Defendants urge the court to apply the criminal enterprise exclusion because Mr.
 15 Boyd's disability arose at the same time he was engaged in the conspiracy. Defendants
 16 ask the court not to consider any causal relationship (or lack thereof), but to find that the
 17 exclusion applies because the disabling injuries and the criminal conspiracy occurred at
 18 the same time. Plaintiff urge the court not to apply the criminal enterprise exclusion,
 19 alleging that the conspiracy and Mr. Boyd's disability are not causally related. Plaintiff
 20 urges that a causal connection is required under a fair reading of the SPD provision.

21
 22 **1. The Plan entitles Mr. Boyd to a disability benefit unless his disability is**
 23 **due to injury incurred while engaged in a willful criminal enterprise.**

24 The court interprets terms in ERISA plans "in an ordinary and popular sense as
 25 would a [person] of average intelligence and experience." Padfield v. AIG Life. Ins. Co.,
 26 290 F.3d 1121, 1125 (9th Cir. 2002). Because the Defendants do not dispute that Mr.
 27 Boyd was medically disqualified from his position because of a legitimate disability, the
 28 only issue before the court is whether Mr. Boyd should have been excluded from

1 receiving a disability benefit because of his participation in a willful criminal enterprise.

2 The applicable provision reads as follows:

3 You will be eligible to receive a Disability Retirement Benefit if you have
4 completed at least 10 Years of Service and you become disabled, *provided*
5 *that your disability is not due to a deliberate self-inflicted injury or injury*
6 *incurred while you were engaged in a willful criminal enterprise.*

7 See Compl. ¶ 9, Ex. B (Summary Plan Description) at 2 (emphasis added). The parties
8 agree that Mr. Boyd is eligible for a disability retirement benefit so long as the disability
9 “is not due to a deliberate self-inflicted injury or injury incurred while you were engaged
10 in a willful criminal enterprise.” Id. The parties agree that the “deliberate self-inflicted
11 injury” provision is not applicable. The parties dispute how the court should construe the
12 remainder of the exclusion language. Mr. Boyd urges he is entitled to a disability
13 retirement benefit:

14 provided that your disability is not due to a[n] ~~deliberate self-inflicted~~
15 ~~injury or~~ injury incurred while you were engaged in a willful criminal
16 enterprise.

17 See Pl.’s Resp. to S.J. at 2. Mr. Boyd argues that the provision excludes disability
18 resulting from two kinds of injury: (a) deliberate self-inflicted *injury*, or (b) *injury*
19 incurred while engaged in a willful criminal enterprise. Mr. Boyd argues that the words
20 “due to” link the two kinds of injury to the word “disability.” Thus, Mr. Boyd urges that
21 the proper inquiry is whether his disability is due to injury incurred while he was engaged
22 in a willful criminal enterprise.

23 Defendants urge a slightly different construction, excising the words “due to” from
24 application to the second provision. Defendants characterize Mr. Boyd’s construction as
25 an attempt to “engraft a causation requirement onto the criminal enterprise exclusion.”
26 Defs.’ Opp. to S.J. at 6. Defendants contend that the criminal enterprise exclusion should
27 be read as follows, with Mr. Boyd being entitled to a disability retirement benefit:

28 provided that your disability is not due to a deliberate self-inflicted injury ~~or~~
 [and is not] ~~injury~~ incurred while you were engaged in a willful criminal
 enterprise.

1 See id. at 7. Defendants present the question as whether Mr. Boyd's disability was
2 "incurred while [he] was engaged in a willful criminal enterprise," and broadly construe
3 the term "while" in a temporal sense. Defendants conclude that "it is beyond question"
4 that Mr. Boyd contracted his disability no later than February 2003 "while engaged in a
5 willful criminal enterprise," because the events occurred at the same time, or at least
6 overlap substantially. Thus, Defendants conclude that Mr. Boyd "inarguably" was
7 ineligible to receive a disability pension under the terms of the criminal enterprise
8 exclusion. Id.

10 The problem with the Defendants' proposed construction is that it requires the
11 replacement of the word "or" with "and," and it ignores the presence of the words "due
12 to," as they explicitly refer to the second type of injury. Defendants' construction also
13 reads out another important word, "injury," in order to arrive at language that supports
14 Defendants' temporal construction.

15 This question of construction ultimately resolves on whether "due to" modifies one
16 or both types of injury. The court concludes that "due to" must modify both types of
17 injury; Plaintiff's proposed reading is correct. Without changing the meaning of the
18 criminal enterprise exclusion, the court concludes that the exclusion is properly (and
19 more clearly) read as follows:

21 You will be eligible to receive a Disability Retirement Benefit if you have
22 completed at least 10 Years of Service and you become disabled, provided
23 that your disability is not due to (1) a deliberate self-inflicted injury; or (2)
24 injury incurred while you were engaged in a willful criminal enterprise.

25 Accordingly, disability retirement benefits should be denied if Mr. Boyd's disability is
26 due to injury incurred while he was engaged in a willful criminal enterprise.
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1 **2. The Plan entitles Mr. Boyd to a disability benefit unless his disability is**
 2 **due to injury *incurred while* he was engaged in a willful criminal**
 3 **enterprise.**

4 Mr. Boyd was engaged in a willful criminal enterprise through August 2003. His
 5 disabling conditions were first identified in February 2003. Defendants urge the court to
 6 conclude that Mr. Boyd's disability is therefore due to injury incurred *while* he was
 7 engaged in a willful criminal enterprise, because the injury occurred at the same time as
 8 Mr. Boyd was engaged in a willful criminal enterprise. However, courts have almost
 9 uniformly refused to give such broad effect to "violation of law" provisions where there
 10 is no causal relationship between the injury and the denial of coverage.

11 The criminal enterprise exclusion in this case is essentially a "violation of law"
 12 provision, excusing liability where the insured is injured "while violating the law" or
 13 "while he was engaged in any violation of law." Courts have limited such exclusions to
 14 circumstances where the violation has some causal relationship to the harm. See, e.g.,
 15 Minnesota Life Ins. Co. v. Scott, 330 F. Supp. 2d 661 (E.D. Va. 2004) (holding that
 16 crime exclusion in accidental death policy required that death result from participation or
 17 attempted participation in crime); Reynolds v. Life & C. Ins. Co., 164 S.E. 602, 603 (S.C.
 18 1932) (holding that to exclude recovery for injury or death "while committing some act in
 19 violation of law," direct causative connection between such act and death or injury must
 20 be shown). Defendants fail to cite law to the contrary.

21 Federal courts have followed these principles in ERISA cases. E.g., Sisters of the
 22 Third Order v. Group Health Ben. Tr., 901 F.2d 1369, 1372 (7th Cir. 1990) (holding that
 23 exclusion for injuries "while engaged in" illegal activity meant injuries "as a result of"
 24 illegal activity). One treatise notes the basis for limiting such exclusions:

25 [S]ince the consequence of applying the exclusion is that the benefits of the
 26 policy are essentially forfeited to the insurer, frequently depriving an
 27 innocent beneficiary of those funds, the courts have commonly required that
 28 there be some causal connection between the injury or death of the insured
 and the violation on which the insurer relies to avoid liability, so that the
 forfeiture is justified by the increase in risk which flows from the insured's

1 action; to avoid liability in the absence of a causal connection would work a
2 legal fraud.

3 Lee Russ & Thomas Segalia, Couch on Insurance 3d § 140:26 (West 2006). The court
4 agrees with Mr. Boyd that a forfeiture of the disability retirement benefit absent a causal
5 connection would defeat his reasonable expectations under the plan. It would be
6 unreasonable to apply the criminal enterprise exclusion if the evidence shows no relation
7 to the injuries or disability. The court concludes that Mr. Boyd is entitled to his disability
8 benefit absent a causal relationship between his disability and his willful criminal
9 enterprise.

10 **3. A reasonable jury could conclude that Mr. Boyd's disability was due to**
11 **injury incurred while he was engaged in a criminal conspiracy.**

12 No party contends that Mr. Boyd's underlying medical problems originated
13 because of his participation in the criminal conspiracy.³ Mr. Boyd's colon polyps were
14 not caused by fraud and his chondromalacia patella was not caused by racketeering.
15 However, a reasonable jury might determine that Mr. Boyd's injuries got worse because
16 of extraordinary stress related to his participation in a criminal conspiracy and indictment.
17 A reasonable jury might also conclude that certain injuries (e.g., hypertension, cardiac
18 arrhythmia) resulted from or were worsened by stress related to his criminal activities (or
19 the discovery of such activities by the authorities).

20 Mr. Boyd's health deteriorated throughout 2003. Dr. Karton's letters and medical
21 charts reference an "extraordinary amount of job-related stress." Dr. Karton notes that
22 the stress is having a adverse affect on Mr. Boyd. See, e.g., Heekin Decl., Ex. 4 (March
23 9, 2004 Karton Letter). Dr. Karton also notes other aspects of Mr. Boyd's job that make
24 it difficult to control his health problems, but fails to mention indictment or crime related
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27 ³ Mr. Boyd's underlying medical problems include hypertension, non
28 insulin-dependent diabetes, high cholesterol, cardiac arrhythmia, degenerative joint
disease, chronic chondromalacia patella, and colonic polyps.

1 stress. Taking the facts in the light most favorable to the Defendants, a reasonable jury
2 might conclude that Mr. Boyd's deteriorating health resulted from his participation in a
3 criminal conspiracy. A reasonable jury might conclude that the "extraordinary amount of
4 job-related stress" Mr. Boyd experienced directly resulted from his willful criminal
5 enterprise and subsequent indictment, plea negotiations, and future in prison.

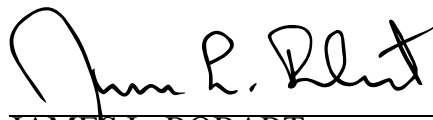
6 Material questions of fact surround the extent of Mr. Boyd's criminal conspiracy,
7 the duration of his participation in the criminal enterprise, and the extent to which his
8 deteriorating health is attributable to "injury" incurred during the course of his
9 participation in a willful criminal enterprise. A reasonable jury could find that Mr.
10 Boyd's criminal enterprise, its discovery, and the resulting consequences were the cause
11 of his increased job-related stress, declining health, and disability.

12 These are issues of fact that may not be resolved on summary judgment.
13 Accordingly, the court DENIES the Plaintiff's motion for summary judgment (Dkt. # 54)
14 and DENIES the Defendants' motion for summary judgment (Dkt. # 55). The jury will
15 decide whether Mr. Boyd's disability was due to an injury incurred while he was
16 involved in a criminal enterprise.

17 IV. CONCLUSION

18 For the reasons stated in this order Plaintiff's motion for summary judgment
19 (Dkt. # 54) is DENIED. Defendants' motion for summary judgment (Dkt. # 55) is also
20 DENIED.
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22 Dated this 11th day of August, 2006.

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26 JAMES L. ROBART
27 United States District Judge
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